



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 10
1200 Sixth Avenue
Seattle, Washington 98101

Bob Hanson
Tri 6.14.1
Memorandum of Agreement

August 1, 1994

Reply To
Attn Of: SO-155

RECEIVED
AUG 02 1994
Office of the Attorney General
DEQ-IDHW

Kevin J. Beaton
Deputy Attorney General
Office of The Attorney General
Natural Resources Division
Environmental Quality Unit
1410 N. Hilton, 2ND Floor
Boise, Idaho 83706

Re: Memorandum of Agreement Between EPA Region X and the Idaho
Department of Health and Welfare, Division of Environmental
Quality for the Triumph Mine Tailings Piles Site

Dear Kevin:

Enclosed is a original signed copy of the above referenced
Memorandum of Agreement (MOA) that was signed by Randall Smith on
this date. Thank you for your cooperation in this matter

Sincerely,

Robert E. Hartman

Assistant Regional Counsel
Robert E. Hartman

cc: Bob Lupton

MEMORANDUM OF AGREEMENT
BETWEEN THE U.S. ENVIRONMENTAL PROTECTION AGENCY Region 10
AND THE IDAHO DEPARTMENT OF HEALTH AND WELFARE,
DIVISION OF ENVIRONMENTAL QUALITY,
FOR THE TRIUMPH MINE TAILINGS PILES SITE

I. INTRODUCTION

1. The Triumph Mine Tailings Piles (hereinafter the "Site") has been proposed for inclusion on the federal National Priorities List (NPL). Under the Environmental Protection Agency (EPA) Administrative Improvements Initiatives, the Agency is exploring unique opportunities for qualified states to undertake response actions at NPL-caliber sites conducted pursuant to state enforcement authority. Further, the Region 10 Superfund Administrative Improvements Implementation Plan contemplates the piloting of a unique process for a limited number of sites. The Idaho Department of Health and Welfare, Division of Environmental Quality (IDEQ), has asserted affirmatively that they possess the statutory authorities and technical expertise necessary to satisfy the threshold requirements for such an opportunity, by requiring the timely completion of a Remedial Investigation/Feasibility Study (RI/FS) pursuant to a Consent Order with potentially responsible parties (PRPs) and by requiring timely completion of Remedial Design/Remedial Action (RD/RA) for the Site that will be protective of public health and the environment. The RD/RA will be conducted pursuant to a second Consent Order to be entered into with the PRPs. This Memorandum of Agreement (MOA) is entered into accordingly.

2. This MOA between EPA and IDEQ describes the roles between the parties to this MOA in the deferral of enforcement and response activities at the Triumph Site, in and around the community of Triumph, Blaine County, Idaho. Those response actions are undertaken by certain parties (Respondents) pursuant to an Administrative Consent Order (CO) entered into voluntarily between the Respondents and IDEQ.

3. By entering into this MOA, EPA acknowledges that the CO will be executed and will be enforced pursuant to the authority of the State of Idaho as exercised by IDEQ. The effective date of this MOA is the date the First Consent Order is executed. By entering into this MOA, EPA in no way shall be deemed to have waived or ceded any of its statutory responsibilities or authorities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq.

4. EPA further acknowledges the desire of the Concerned Citizens of Triumph and the Blaine County Commissioners and others to have this site withdrawn (deproposed) from the proposed National Priority List (NPL) concurrently with the state pilot and to have the state pilot and work under related enforceable agreements proceed in a successful manner.

5. EPA will proceed to withdraw the site from proposal for inclusion on the NPL, in accordance with applicable federal statutes and regulations, upon execution of the Second Consent Order. However, the following conditions must be met: acceptance by the affected community and completion of the terms and conditions set forth in the First Consent Order in accordance with the terms of this MOA. If prior to execution of the second Consent Order, response actions taken in accordance with CERCLA and the NCP and pursuant to governing Consent Orders result in protection of human health and the environment, EPA may consider whether to withdraw the site from proposal for inclusion on the NPL.

II. SCOPE AND APPLICABILITY

1. This MOA is entered into between IDEQ and Region 10 EPA pursuant to CERCLA, as amended, and by IDEQ pursuant to its authority under the Idaho Environmental Protection and Health Act and the Idaho Hazardous Waste Management Act.

2. This MOA will be interpreted and implemented in a manner consistent with the National Contingency Plan (NCP) Subparts E through I, 40 C.F.R. §§ 300.400 through 825, as amended.

3. This MOA is applicable only to the Triumph Site, located in Blaine County, Idaho. This MOA does not replace any existing or future Superfund Cooperative Agreements, Superfund State Contracts, or site enforcement documents pertaining to the Site. Further, this MOA does not imply that the parties will necessarily enter into similar agreements in the future.

4. This MOA extends no benefits or rights to any person including potentially responsible parties (PRPs), not a signatory to this MOA. Either agency may withdraw from this MOA upon thirty (30) calendar days written notice.

5. Nothing in this MOA shall be construed to restrict in any way EPA's authority to fulfill its oversight and enforcement responsibilities under CERCLA, as amended, under other federal law or under regulations promulgated by EPA. Nothing in this MOA shall be construed to restrict in any way IDEQ's authority to fulfill its responsibilities or undertake action under state or federal authorities.

6. This MOA will be in effect through the final remediation of the Site.

III. PURPOSES

1. EPA recognizes IDEQ's willingness to pursue timely investigations and environmental remediation activities at the Site for the purposes of protecting public health and the environment.

2. The MOA is intended to facilitate an effective working relationship among all interested persons, to avoid conflict and duplication of effort, and to make optimal use of resources in conducting investigations and response activities at the Site.

3. The MOA establishes the framework for the EPA/IDeq relationship by identifying the respective roles and responsibilities of IDEQ and EPA, at the Site, for implementation of the respective federal Superfund and State environmental remediation programs.

4. Specifically, the purposes of this MOA are to:

A. Clarify the roles and responsibilities of IDEQ and EPA with regard to:

1. Further site characterization;
2. Remedial activities, including remedial investigations, feasibility studies (RI/FS), applicable treatability studies, risk assessments, and Records of Decision (ROD);
3. Necessary removals and interim actions.

B. Establish procedures for the timely exchange of site-specific technical information, reports, studies, and other pertinent materials and documents.

C. Assure that assessment, remedial, and removal activities conducted at the Site are consistent with CERCLA as amended, and the NCP, as amended. Where appropriate, principles and approaches from the Superfund Accelerated Cleanup Model (SACM) may be considered.

D. Define the roles, responsibilities, and procedures for enforcement activities.

E. Identify the baseline requirements for IDEQ efforts in community relations, press releases, media contacts, and public meetings.

F. Identify the responsibilities for IDEQ in compiling and maintaining the administrative record(s), including contents and location.

G. Establish procedures for site-specific coordination and communication between EPA and IDEQ.

H. Provide a mechanism for resolving disputes concerning any provision in this MOA.

I. Provide a process for reviewing, amending, or terminating this MOA.

IV. SITE DESCRIPTION AND BACKGROUND

A. SITE DESCRIPTION

1. The Triumph Mine Tailings Piles Site is located in an arid, mountainous region of central Idaho. The Triumph Mine operated from the late 1800's to 1957, producing ore rich in silver, zinc, and lead. Although most processing occurred out of state, ore was processed on location beginning approximately in 1947, producing an ore concentrate. Processing included crushing, grinding and flotation of the ore. The flotation tailings remaining from the processing, were pumped as a slurry into an adjacent wetland area, forming two large piles. Portions of the wetlands were dredged to deepen the disposal area. The upper tailings pile comprises approximately 8 acres. The lower tailings pile comprises approximately 32 acres. The aggregate 40 acres of mine tailings exhibit high concentrations of lead and arsenic and other metals. The tailings are located in the flood plain of the East Fork of the Big Wood River (Wood River). The Triumph community, consists of single family residences, located near the tailings piles. The two tailings piles, the mine waste rock pile on the north side of the East Fork road, and the former processing foundation area remain largely unvegetated. The surrounding areas are covered by highland grasses, wetland vegetation, shrubs and trees.

2. Elevated concentrations of metals including but not limited to arsenic, lead, cadmium, and antimony are present in surface and subsurface tailings samples, surface runoff samples, wetland samples, residential soil and roadway samples downwind of piles, downwind air samples, samples from the former processing foundation, waste rock pile samples, mine drainage from the main portal samples, sediment samples in the East Fork of the Big Wood River 1,000 feet downstream, and shallow groundwater samples apparently above background. During 1991 and 1992, the lower (west) community well was sampled six times. On two separate occasions, lead was detected above the federal drinking water standard.

B. BACKGROUND

1. In November 1987, Blaine County Planning and Zoning referred the site to EPA indicating concern over potential metal contamination leaching into the Wood River and local groundwater. A Preliminary Assessment (PA) was conducted by the IDEQ in 1988. The EPA conducted a Site Investigation in 1991.

2. In response to potential health-related concerns raised by the Site Investigation, EPA's removal program began a separate assessment in the Fall of 1991 to evaluate the presence of potential health threats which may warrant more immediate actions. Part of this investigation included an Expedited Public Health Risk Assessment and Bioavailability Study. It is expected that the Bioavailability Study Report will be completed by

December 1994 (the residents of the Triumph community object to the study). The Expedited Risk Assessment was finalized in May 1993. In conjunction with this removal investigation, the Agency for Toxic Substances and Disease Registry (ATSDR), with assistance from state and local health departments, conducted a screening of blood-lead and urinary arsenic in November 1991, July 1992, September 1992 and again in July 1993 (the results of the July 1993 testing have yet to be provided to the citizens of Triumph). ATSDR has also issued two Health Consultations (fall 1991, spring 1992) detailing potential human health concerns at the Site. Screenings for blood lead and urinary arsenic to date do not indicate that exposure is occurring at levels which would warrant medical intervention even though residents may have had or may have contact with site contaminants at concentrations which could potentially produce adverse health effects.

3. The Site was proposed for inclusion on the National Priorities List (NPL) in May 1993. A Removal Action Memorandum was signed by the Region 10 Hazardous Waste Director on November 1, 1993, which calls for the need for certain removal response activities including but not necessarily limited to voluntary residential yard soil sampling and voluntary yard removal activities, strategic fencing and the posting of warning signs around the tailings piles (the residents of the Triumph community have opposed all removal actions because they question the need for such removal actions). To date, the community has received fact sheets identifying areas of potential concern and information on ways to reduce exposure to heavy metals. Additionally, a public meeting was held on February 7, 1994 to solicit community input.

C. STUDY AREA

1. The study area consists of potential source areas of hazardous substances associated with the Triumph Mine operation, the potential routes of migration of hazardous substances, potential human health and ecological exposure pathways, and the affected media.

2. IDEQ will ensure that a thorough background search and evaluation will be performed to identify potential source areas associated with the Triumph Mine operation. This will include but may not be limited to, tailings and waste rock disposal areas, mine drainage from tunnels and adits, rock processing areas, and ore storage and distribution areas. This evaluation will be used in scoping the RI, in defining the extent of contamination, and in evaluating necessary remediation alternatives. For any new source areas identified in scoping the RI or during the RI, a limited field investigation will be performed at a minimum, to determine if further data collection is warranted under the RI.

V. INTERAGENCY COMMUNICATION AND COORDINATION

A. COMMUNICATION

1. EPA and IDEQ agree to communicate in an open and candid manner. Both agencies intend to use personal contact and telephone conference calls as the primary means to maintain open communication, discuss ongoing and upcoming activities, and discover and resolve problems between the two parties. The agencies commit to maintain sufficient staff contact and direction to recognize and address problems as they arise.

2. Generally, communications will be between assigned project managers in the respective agencies, as described below. IDEQ and EPA are committed to the concept of staff empowerment, attempting to resolve issues at the lowest level where persons are most knowledgeable about the issues at hand. Any sustained, repeated, or otherwise unresolved problems in communication or timely remedial or removal activities should be promptly reported to the appropriate management levels for resolution as set out in Section XII -- Resolution of Disputes -- of this MOA.

3. EPA and IDEQ commit to respond in a timely manner to requests and communications from other involved and interested persons.

B. COORDINATION

1. The IDEQ Regional Administrator, South Central Idaho Regional Office (SCIRO) and the EPA Region 10 Superfund Remedial Branch Chief shall be responsible for overall program communication and coordination between the agencies.

2. The IDEQ Regional Administrator, SCIRO, and the EPA Chief of the Superfund Site Management Section II along with the Idaho Operations Office Hazardous Waste Section Chief, shall be the agencies' respective management contacts under this MOA.

3. The designated IDEQ Remedial Project Manager (RPM) and EPA Project Manager (PM) are the primary liaisons responsible for site-specific communication and coordination for routine, day-to-day activities covered by this MOA. Routine communication and resolution of site-specific technical issues will be through the RPM and PM.

VI. INFORMATION EXCHANGE

1. IDEQ will provide two copies of the following draft, draft final, and final major documents to EPA. One copy should be submitted to the Idaho Operations Office and the other copy to the EPA Region 10 Seattle Office. These major documents include but may not be limited to: community relations plans, workplans including sampling and analysis plans and quality control/quality assurance project plans; remedial investigation reports; risk

assessment reports; feasibility study reports; proposed plan for recommended remedial alternative (Proposed Plan); record of decision; remedial design (50 & 100 percent); and remedial action reports.

2. EPA will provide to IDEQ copies of all superfund site files associated with the Triumph Mine Tailings Pile Site.

3. Each agency will supply requested information to the other in as timely a manner as possible or as otherwise specified in this MOA.

VII. REPORTING

1. Quarterly progress reports shall be submitted within twenty (20) calendar days following the close of each federal fiscal quarter. The information in each report shall include:

a. An explanation of the work accomplished during the reporting period, delays or other problems, if any, and a description of the corrective measures that were taken and/or are planned. The report should include a list of all documents submitted to IDEQ by the PRPs including interim deliverables. The submittal date of the documents and the date IDEQ comments were submitted or are planned to be submitted should also be provided.

b. A comparison of the progress towards meeting the original schedule outlined in the MOA, and an explanation of significant discrepancies. In addition, an updated working schedule outlining specific tasks including interim deliverable submittal dates and field activities should be provided. An explanation of what activities and document submittals are planned for the subsequent quarter should also be provided.

2. Open quarterly progress meetings shall be held within thirty (30) calendar days following the close of each federal fiscal quarter. The purpose of these meetings will be to discuss the progress of site-specific activity for each of the study areas.

VIII. CONFIDENTIAL DOCUMENTS

1. IDEQ will allow public access to its documents in accordance with the Community Relations Plan and applicable state public access to records laws, including Idaho Code §§ 9-337 through 9-347. EPA will allow public access to its documents pursuant to the procedures established under the Freedom of Information Act (PL 93-502).

2. EPA and IDEQ agree to protect each other's claims of confidentiality to the extent permissible under federal and state law. Limitations on the release of information from agency

documents or records related to the Site may be necessary to maintain either agency's pending or ongoing enforcement actions, particularly during negotiations and in court.

3. All documents for which confidentiality has been requested or granted shall continue to be treated as confidential to the extent legally permissible until the agency requesting or granting confidentiality removes that status. The agency removing confidential status shall provide notice to the other agency before releasing the documents.

IX. COMPLIANCE WITH APPLICABLE REQUIREMENTS

1. IDEQ agrees to ensure that state-lead response activities conducted at the Site are consistent with CERCLA as amended, the NCP, and Idaho state laws and regulations. As appropriate, SACM principles and approaches will be considered.

2. IDEQ further agrees to ensure that PRP-lead response activities at the Site are consistent with CERCLA as amended, the NCP, and Idaho state laws and regulations. As appropriate, SACM principles and approaches will be considered.

3. Consistent with the NCP, as amended, a CERCLA-protective remediation is generally defined by a risk range of 10-4 to 10-6 for carcinogens and a Hazard Index of 1 or less for non-carcinogens. The State should consider giving preference to solutions that will be reliable over the long-term. Additionally, the remedy selected must comply with all applicable federal and more stringent state requirements.

X. AGENCY ROLES

A. EARLY ACTIONS

1. IDEQ may perform or require responsible parties to perform removal or interim actions (early actions) regarding the Site. It is anticipated that non-time critical removals and interim remedial actions, if any, will be PRP-lead responses with state oversight.

2. Upon IDEQ's request, EPA will assist IDEQ in interpreting CERCLA, regulations promulgated thereunder, and policy and guidance.

3. If early actions are warranted, IDEQ will notify the residents of the Triumph community and EPA prior to these actions being implemented.

4. EPA believes that certain early actions are warranted as discussed in the EPA Action Memorandum dated November 1, 1993. These early actions include but may not be limited to: strategic fencing to restrict unknowing or inadvertent access to the tailings piles and hillside foundation area; posting of signs to

inform non-residents of the lead and arsenic contamination in these areas; and a standing offer to Triumph residents, especially families with children, to sample suspected hotspots in residential yards upon request, and replace contaminated soils if there is concern of exposure. IDEQ agrees to evaluate and assure implementation of early actions, as necessary and appropriate as determined by IDEQ.

B. REMEDIAL MEASURES

1. IDEQ shall be responsible for ensuring the complete and expeditious conduct of remedial activities, including but not necessarily limited to, completion of RI/FS(s) and RD/RA(s). IDEQ shall also be responsible for preparing baseline human health and ecological risk assessments and issuing Proposed Plans and RODS. IDEQ will carry out these activities using state authorities and resources. These documents may be prepared by a contractor hired by IDEQ.

2. EPA will not participate in or oversee the detailed, day-to-day management and communication activities for the Site. EPA may evaluate and comment on some of the major decision points, conceptual approaches, broad issues, and overall results as they relate to this deferral MOA, but has no obligation to do so. Should EPA elect to provide comments to documents submitted to it under this MOA, they will do so within thirty (30) calendar days of receipt of documents. Extensions will be granted by mutual agreement.

3. IDEQ may develop its own workplans or review PRP-proposed workplan(s) describing the scope and content of the RI/FS(s) needed to select and implement remedial action(s). Should EPA choose to provide comments on such documents, IDEQ will attempt to incorporate or resolve any EPA comments.

4. IDEQ will promptly notify the appropriate Natural Resource Trustees of releases that are injuring or may injure natural resources related to the Site and include them, as appropriate, in negotiations with the PRPs.

5. IDEQ will continue timely provision of the necessary and appropriate information to ATSDR to permit them to conduct health assessment activities for the Triumph Site.

6. At the conclusion of the Feasibility Study, IDEQ or its contractor(s) shall prepare the Proposed Plan and notify EPA in writing regarding remedial action recommendations before publication of the Proposed Plan. Such notification is for the purpose of keeping EPA informed and allowing EPA the opportunity to provide comments. If EPA chooses to provide comments, IDEQ shall consider substantive comments and incorporate them or resolve them before issuance of a decision document. EPA has no obligation to provide comments. Should EPA elect to provide comments to the Proposed Plan, they will do so within thirty (30)

calendar days of receipt. Extensions will be granted by mutual agreement.

7. IDEQ or its contractor(s) shall prepare a copy of the proposed Record of Decision or other decision document. Copies will be provided to EPA for review and comment prior to final signature by IDEQ. EPA has no obligation to provide comments. Should EPA elect to provide comments to the proposed Record of Decision, they will do so within thirty (30) calendar days of receipt of documents. Extensions will be granted by mutual agreement.

8. In the future, if deletion from the NPL is necessary because deposal has not occurred pursuant to the terms of this MOA, EPA will follow applicable law and regulations in deleting the Site.

9. IDEQ will endeavor to ensure completion of investigations and remediation decisions in accordance with the schedule set forth in Attachment A to this MOA. It is IDEQ's expectation to complete the activities identified in Attachment A prior to the dates set forth therein. This schedule is subject to revision by mutual agreement between EPA and IDEQ.

10. Once IDEQ considers remediation of the Site to be complete, IDEQ shall certify to EPA, the PRPs, and the affected community that the selected remedy has been implemented and achieved its intended cleanup levels. As part of that certification, IDEQ shall submit to the EPA response action completion documentation similar to the Remedial Action Report (OSWER Directive 9355.0-39FS). This documentation shall describe the features of any long-term Institutional Controls Program (ICP) and provide the necessary assurances for Operation and Maintenance of the ICP and any contained waste. Within thirty (30) calendar days of receiving IDEQ certification, EPA should designate the site as "Deferred Site Completed" (DSC) unless EPA chooses to initiate a "Deferral Completion Inquiry" (DCI) to confirm the certification. EPA will work with the IDEQ to address any issues hindering confirmation. Upon completing the inquiry, EPA will either confirm the certification or terminate the deferral status of the Site.

C. QUALITY ASSURANCE/QUALITY CONTROL

Sampling plans and quality assurance project plans shall be developed for the Site according to EPA guidance. IDEQ shall assure that work performed, samples taken, and analyses conducted by the PRPs or IDEQ conform to the requirements of the sampling plan and quality assurance project plans. IDEQ will require the PRPs to demonstrate that field personnel used by the PRPs are properly trained in the use of field equipment and in chain of custody procedures.

D. RISK ASSESSMENT

1. IDEQ shall prepare a baseline human health and ecological risk assessment following EPA risk assessment guidance. The risk assessment may be prepared by a contractor hired by IDEQ.

2. For the baseline human health risk characterization, reasonable maximum exposure (RME) risk estimates shall be performed using EPA standard default exposure factors (SDEF) to characterize upper-bound risk estimates. In addition, site-specific RME risk estimates, average risk estimates and Monte Carlo probabilistic simulations may be performed using site-specific exposure factors to evaluate risk distribution and the uncertainty associated with the upper-bound risk estimate, if deemed appropriate by IDEQ. Rationale for site-specific exposure factors used in estimating site-specific RME and average risk estimates shall be provided in the risk assessment report. It is the expectation of IDEQ and EPA that RMEs (either SDEF or site-specific) and information provided in the uncertainty section will be used for risk management decision making at the Triumph Site.

E. OVERSIGHT

1. IDEQ shall provide the RPM with technical support in all areas of technical expertise that will be required to adequately investigate, evaluate, and remediate the site.

2. IDEQ will be responsible for oversight of field activities. Should EPA choose to conduct site visits, it will coordinate arrangements with IDEQ.

F. ENFORCEMENT

1. Effective and timely enforcement is an essential component of successful management of NPL and NPL-caliber sites. Enforcement actions taken in response to noncompliance with consent order(s) will be timely and pursued to resolution in accordance with applicable laws, and the terms of the relevant consent order(s).

2. IDEQ shall enforce the terms of settlements for PRP-lead removal or remedial activities at the Site set forth in administrative consent orders, in accordance with applicable law.

3. IDEQ will promptly notify EPA of intent to negotiate a consent order with a PRP.

4. IDEQ will be responsible for all enforcement communications and activities for the Triumph Site.

5. IDEQ will provide the EPA with copies of enforcement documents which shall be subject to the confidentiality provisions of Section VIII of this MOA.

6. Concurrently with these enforcement activities IDEQ may, where the responsible parties are unwilling or when it is appropriate, conduct response activities related to the Site. EPA may take emergency response actions as necessary and appropriate.

7. The parties agree, in accordance with CERCLA as amended, that qualified PRPs will be afforded the opportunity and/or be required to undertake necessary remedial or removal activities at the Site and that the use of public funds, except public funds expended by a PRP, to undertake remedial or removal activities is secondary to securing PRP commitments to conduct site remediation. This is a fundamental expectation of the proposed deferral policy.

8. Each agency is responsible for recovering its own past and future costs and each shall make no efforts to prejudice the claims of the other.

G. COMMUNITY RELATIONS

1. IDEQ will coordinate the community relations efforts at the Site.

2. IDEQ will chair all public meetings regarding the Triumph site. EPA may attend any public meetings to serve as a resource to IDEQ and the community.

3. IDEQ will ensure that a wide variety of agencies and groups, including cities, counties, affected citizens, property owners, environmental groups, governmental officials, and the media will be informed in a timely manner and given opportunities for involvement in the decision-making process during the investigation and remediation of the Site.

4. IDEQ agrees to not delegate its community relations activities to any potentially responsible party.

5. Preparation of press releases, fact sheets, responsiveness summaries, and contacts with the media are the responsibility of IDEQ. Copies of final press releases or written communications shall be provided to the EPA by IDEQ prior to the time of release. Any press release or fact sheets prepared by EPA shall be provided to IDEQ, the residents of the Triumph community, and the PRPs prior to the time of release.

XI. ADMINISTRATIVE RECORD

1. IDEQ agrees to compile and make available to the public an Administrative Record of all response actions consistent with

CERCLA Section 113, 42 U.S.C. § 9613, NCP Section 300.800, 40 C.F.R. §300.800, and all relevant EPA administrative record guidance documents. The Administrative Record shall contain all information and documents upon which the selection of any remedial actions or non-time critical removal actions is based. IDEQ agrees, upon request from EPA, to make available to EPA a full copy of the Administrative Record.

2. EPA agrees to provide assistance in making available guidance documents and staff advisors, if requested and available, to IDEQ in developing plans for establishing an Administrative Record. The Administrative Record for the Site shall also incorporate final documents prepared by EPA or IDEQ pursuant to this MOA.

3. IDEQ will locate a copy of the official Administrative Record at the Hailey Library and a second copy at the address of the Concerned Citizens of Triumph at 544 E. Fork Road, P.O. Box 3730, Triumph, Idaho in accordance with IDEQ regulations and policies. 7

XII. DISPUTE RESOLUTION

1. In the event of disputes between EPA and IDEQ concerning their respective responsibilities under this deferral MOA for the Site, the parties will attempt to resolve disputes at the lowest appropriate level. Generally, for site-specific issues, the appropriate level will be the designated remedial project managers who will attempt to resolve such disputes promptly and fairly.

2. If disputes cannot be resolved, the problem will be referred to the supervisors of these persons for further EPA/IDEQ consultation. This supervisory referral and resolution process will continue, if necessary, to the Administrator of IDEQ and the Director, Hazardous Waste Division, EPA, Region 10.

XIII. RESERVATION OF RIGHTS

1. Except as specifically provided in this MOA, nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid wastes on, at or from the Site.

2. Further, nothing herein shall prevent EPA, the United States or IDEQ from taking other legal or equitable actions as EPA or IDEQ deems appropriate and necessary, or from requiring Respondents in the future to perform additional response activities pursuant to CERCLA or other applicable federal or State laws.

XIV. AMENDMENTS, MODIFICATION, OR TERMINATION OF THIS MOA

1. EPA and IDEQ will jointly review this MOA at least once a year, and amend the MOA if necessary. This MOA may be modified upon mutual written agreement.

2. This MOA or portions of it may be terminated by either party upon thirty (30) calendar days written notice.

3. If, at any time during or upon completion of a response action, EPA determines that the response is not CERCLA-protective, is unreasonably delayed or inappropriate, or does not adequately address the community's concerns, EPA may terminate the deferral status of the site. EPA may also terminate the deferral if PRPs breach their agreements with the State. Pending 30 days notice and discussion with IDEQ, EPA shall designate the site as "Deferral Status Terminated" (DST).

4. This MOA will automatically terminate upon a DST or DSC determination by EPA.

For the Idaho Division of Environmental Quality

JOE NAEL

Administrator, Division of Environmental Quality

Date

07/28/94

For the U.S. Environmental Protection Agency

Randall F. Smith

Director, Hazardous Waste Division

Date

8/1/94

ATTACHMENT A

The latest dates for completion of activities covered under this MOA.

IDEQ Schedule

1. Consent Order by: August 1994
2. Remedial Investigation by: March 1996
3. Feasibility Study by: August 1996
4. Proposed Plan by: October 1996
5. Record of Decision by: January 1997
6. Remedial Action Plan by: April 1997
7. Completion of all Remedial Actions by: March 1998